

**CITY OF SHOREVIEW
MINUTES
REGULAR CITY COUNCIL MEETING
December 19, 2011**

CALL TO ORDER

Mayor Martin called the regular meeting of the Shoreview City Council to order at 7:00 p.m. on December 19, 2011.

PLEDGE OF ALLEGIANCE

The meeting opened with the Pledge of Allegiance.

ROLL CALL

The following members were present: Mayor Martin; Councilmembers Quigley, Wickstrom and Withhart.

Councilmember Huffman was absent.

APPROVAL OF AGENDA

Mayor Martin requested a brief discussion on meeting dates under the *Special Order of Business* portion of the meeting.

MOTION: by Councilmember Withhart, seconded by Councilmember Wickstrom to approve the December 19, 2011 agenda as amended.

VOTE: Ayes - 4 Nays - 0

PROCLAMATIONS AND RECOGNITIONS

Mayor Martin and the Council recognized Park and Recreation Director Jerry Haffeman who has worked for the City 40 years and is now retiring. She presented him with two plaques. In recognition of Mr. Haffeman's service, the Community Center pavilion will be named the Haffeman Pavilion.

Mr. Haffeman stated that the one thing he has so appreciated is the consistent outstanding leadership from Mayor Martin and the Council.

CITIZEN COMMENTS

There were none.

COUNCIL COMMENTS**Mayor Martin:**

Shoreview is privileged to receive a Livable Communities Grant in the amount of \$655,000 that will be used for the realignment of Victoria and County Road E and redevelopment of the Midland Terrace retail area. She commended staff for the outstanding application submitted to the Metropolitan Council.

Councilmember Withhart:

Echoed Mayor Martin in his appreciation to staff for bringing in a \$655,000 grant for a major redevelopment project in the City.

This is the two-week period when free fitness classes are offered at the Community Center. Full information is listed on the City website.

Councilmember Wickstrom:

Beginning in January, plastic containers and lids will be accepted in recycling.

Thank you to the Shoreview Northern Lights Variety Band for an excellent concert a couple of weeks ago.

CONSENT AGENDA

Councilmember Wickstrom asked about the landlord/tenant law training session in January as reported in staff's Community Development report. She asked if tenants will be invited. Mr. Simonson stated that letters of invitation have been sent to tenants.

MOTION: by Councilmember Quigley, seconded by Councilmember Wickstrom to approve the Consent Agenda and all relevant resolutions:

1. December 5, 2011 City Council Meeting Minutes
2. Receipt of Commission/Committee Minutes
 - Planning Commission, October 25, 2011
3. Monthly Reports:
 - Administration
 - Community Development
 - Finance
 - Public Works
 - Park and Recreation
4. Verified Claims in the Amount of \$1,642,450.22
5. Purchases
6. License Applications

7. Developer Escrow Reduction
8. Adoption of Working Capital Targets and Receipt of 2012 to 2016 Five-Year Plan
9. Designation of Official Depositories for 2012
10. Certification of Delinquent Utility Accounts
11. Certification of Delinquent Tree Removal
12. Establishing a Budget Policy
13. Amendment to Planned Unit Development/Site Development Agreements - Southview Senior Living LLC (Cascades)

VOTE: Ayes - 4 Nays - 0

PUBLIC HEARING

MODIFICATION OF MUNICIPAL DEVELOPMENT DISTRICT NO. 2, ESTABLISHMENT OF TAX INCREMENT FINANCING DISTRICT NO. 7 (ECONOMIC DEVELOPMENT DISTRICT) AND ADOPTION OF TAX INCREMENT FINANCING PLAN FOR SOUTHVIEW SENIOR LIVING (CASCADES) SENIOR HOUSING PROJECT

Presentation by Asst. City Manager/Community Development Director Tom Simonson

The development is on the east side of Hodgson Road, north of Highway 96 and south of Tanglewood Drive. The Planned Unit Development (PUD) was approved in 2008. However, construction was delayed due to the housing market and finance restrictions.

The project consists of 105 units, which includes 30 independent care units, 43 assisted living units and 32 memory care units. The approved PUD includes a small scale office development. An existing vacant residence adjacent to the property was recently purchased and that property will be incorporated into the senior living site.

The developer seeks \$750,000 in TIF assistance for the following reasons:

1. The high cost of property acquisition from the previous developer;
2. Limited financing options, including the Federal HUD program;
3. Recent acquisition of the Schneider residential property; and
4. The desire to upgrade the building and site amenities.

Financial support would be funded through creation of a new Economic Development TIF District for a term of nine (9) years.

The legislature has granted temporary authority for flexibility in the use of tax increment financing (TIF). The provision requires construction of a qualifying project to begin no later than December 31, 2011. The developer has received site and building plan approvals and submitted a building permit application. Demolition of the existing house before the end of the year will qualify this development for the TIF assistance, which will be a pay-as-you-go tax reimbursement upon completion of the development.

There is a provision for affordability through the Elderly Waiver (EW) Program for eligible residents. The Minnesota Department of Human Services operates the EW program through a Federal waiver administered by the County. The developer will provide 12 units for residents eligible for EW for 15 years. The EW program will provide skilled nurse services, home health aid service, personal care assistance and other services.

The EDA has reviewed this proposal extensively and recommends approval with an affordable component through the EW units.

Mr. Simonson noted the revised motion.

Mayor Martin opened the public hearing.

MOTION: by Councilmember Wickstrom, seconded by Councilmember Quigley to close the public hearing at 7:27 p.m.

VOTE: Ayes - 4 Nays - 0

Mayor Martin noted that the previously approved PUD did not include the recently acquired residential home. She asked how that would be addressed. Mr. Simonson responded that the Development Agreement requires an amendment within 24 months.

MOTION: by Councilmember Withhart, seconded by Councilmember Quigley to adopt Resolution No. 11-102, approving the Tax Increment Financing Plan for the creation of a new tax increment district No. 7 and Resolution No. 11-103, approving and authorizing execution of a Tax Increment Financing Development Agreement for the Shoreview Senior Living, LLC/Cascades Senior Housing Project.

Discussion:

Councilmember Wickstrom was referred to Mr. Simonson with questions regarding the Elderly Waiver Program, which she did not feel needed to be elaborated at this meeting.

ROLL CALL: Ayes: Quigley, Wickstrom, Withhart, Martin
Nays: None

GENERAL BUSINESS

ITEMS RELATED TO THE BUDGET AND 2012 TAX LEVY

- A. Amend 2012 Debt Levies
- B. Adopt 2012 Tax Levy (City, HRA and EDA)
- C. Adopt 2012-2013 Biennial Budget
- D. Adopt Capital Improvement Program for 2012 through 2016
- E. Employee Wage and Benefit Adjustment

Presentation by Finance Director Jeanne Haapala

Debt Levies

Once the City issues debt, they are recorded at Ramsey County as part of the debt issue. The debt levy for 2012 is \$658,026, which is \$242,354 less than the scheduled levies.

Tax Levy

The proposed tax levy is \$9,290,086, which is \$202,000 less than initial requests when the budget process started. The 2012 HRA levy is set at \$70,000. Based on preliminary tax rates released by Ramsey County, the median home value in Shoreview dropped to \$235,000, approximately 5.5%. The City portion increases approximately \$4.00 per year for a median valued home. The total tax bill is increasing \$116.00. Budget booklets are available at City Hall.

Biennial Budget

This budget covers 2012-2013. Approval at this meeting is for the General and Special Revenue Funds, as required by state statute. The budget for 2012 is adopted for all operating funds. The 2013 budget is a plan and is not spendable until it is amended or reaffirmed during the budget process next year.

Capital Improvement Program (CIP)

The CIP is adopted as a planning document of anticipated projects for the next five years. No projects are authorized. Separate Council approval is required for capital costs/projects more than \$25,000. Replacements consist of 81% of the CIP. This does not include the planned water treatment plant.

Wage and Benefit Adjustments

A 1% wage adjustment is recommended with some health insurance changes. Approval is also requested for the annual job classification system.

State law requires that the City adopt a budget and tax levy to certify to the County and State by December 28, 2011.

Councilmember Wickstrom thanked staff for all the work done to establish a biennial system.

MOTION: by Councilmember Quigley, seconded by Councilmember Wickstrom to adopt proposed resolution number 11-95 reducing debt levies for fiscal year 2012 per Minnesota Statutes.

ROLL CALL: Ayes: Wickstrom, Withhart, Quigley, Martin
Nays: None

MOTION: by Councilmember Wickstrom, seconded by Councilmember Quigley to adopt proposed resolution number 11-96 adopting a tax levy for the City of Shoreview in the amount of \$9,290,086 for taxes payable in 2012 and adopting an HRA tax levy of \$70,000 for taxes payable in 2012.

ROLL CALL: Ayes: Withhart, Quigley, Wickstrom, Martin
Nays: None

MOTION: by Councilmember Withhart, seconded by Councilmember Quigley to adopt resolution number 11-97 approving the biennial budget for the years 2012 and 2013 as detailed on the attached pages.

ROLL CALL: Ayes: Quigley, Wickstrom, Withhart, Martin
Nays: None

MOTION: by Councilmember Quigley, seconded by Councilmember Withhart to adopt resolution number 11-98 approving the capital improvement program for the years 2012 through 2016 as detailed on the attached pages.

ROLL CALL: Ayes: Wickstrom, Withhart, Quigley, Martin
Nays: None

MOTION: by Councilmember Wickstrom, seconded by Councilmember Quigley to approve a 1.0% wage adjustment for all regular employees, to increase the City contribution for employee health insurance to \$710 per month, to maintain the VEBA contribution amount at its current level, and to adopt the attached Job Classification System and Pay Plan effective December 24, 2011.

ROLL CALL: Ayes: Withhart, Quigley, Wickstrom, Martin
Nays: None

ADOPT ORDINANCE ESTABLISHING 2012 UTILITY RATES**Presentation by Finance Director Jeanne Haapala**

The proposed rates address utility fund losses particularly in the water fund but also in some of the other funds where expenses have exceeded revenue for a number of years. Declining water consumption has resulted in higher increases to cover operating costs. The proposed rate for 2012 is expected to close the gap between revenue and expenses. The proposed rates maintain sufficient cash balances to cover unanticipated maintenance, repairs and replacements.

A base year approach of gallons is used for water fund rates. The usage has declined steadily over the last several years. Factors that have influenced this trend are rainfall and declining household water use. Sewage treatment costs that are paid to the Metropolitan Council are approximately 51% of the sewer budget. Other expenses in utility funds include contributions to water management district, emergency repairs, debt payments, depreciation and energy/fuel costs.

Capital costs include rehabilitation of water towers, water and sewer line repair and replacement, sewer televising and relining, sanitary sewer lift stations, street light repairs/replacements and a planned water treatment plant to be built in 2015. Street light rates continue to increase due to replacement of bulbs, repairs and higher capital costs of replacements.

The City bills water on a tiered structure based on cost per 1,000 gallons of water. The City has experienced the fact that the highest percentage of water usage is in the least expensive tier, which does not generate the revenue needed. Therefore, the City has decided to break down the first tier with a new tier 2 between tiers 1 and 3 beginning in January. This will help bring in needed revenue to close the gap between revenue and expenses.

The water availability charge will be \$13.00 in 2012. Tiered rates per thousand gallons will be:

- Tier 1 \$1.04, First 5,000 gallons used
- Tier 2 \$1.69, Second 5000 gallons used
- Tier 3 \$2.34, 20,000 gallons
- Tier 4 \$3.84, remainder

There is no change to sewer rates in 2012, as sewage flow has decreased. The sewer availability charge will remain at \$35.76, and tiered sewer rates will range from \$15.11 to \$70.50 per quarter, which will help offset the increase in water rates.

Surface water rates will increase to \$17.57 per quarter per single family and \$18.61 per quarter per multi-family units. A small loss is expected and more aggressive increases are planned for next year. The street light fee will increase to \$9.11 per quarter per single family and \$6.83 per quarter per multi-family.

The impact to the total utility bill for the average customer is an increase of approximately \$11.00 per quarter.

Staff is recommending approval of these rates.

Councilmember Withhart noted that in regard to surface water utility, state water quality standards are higher and more infrastructure is needed to comply. It is not surprising there is some loss in that fund, even though staff works to be as cost effective as possible.

Councilmember Wickstrom noted receipt of a complaint regarding the four tier structure for water rates. The reason for the tiered structure is to conserve water in order not to have to build another water tower, which would be very expensive.

MOTION: by Councilmember Quigley, seconded by Councilmember Withhart to adopt ordinance number 887 establishing a utility fee schedule effective January 1, 2012.

ROLL CALL: Ayes: Quigley, Wickstrom, Withhart, Martin
Nays: None

ABATEMENT OF PUBLIC NUISANCE - 1648 LOIS DRIVE

Presentation by City Planner Kathleen Nordine

In July, the City became aware of an illegal accessory structure on this property. A Stop Work Order was issued. No building permit had been issued for the structure, which violated City ordinances because it exceeds the maximum area and maximum height permitted in City Code, and it encroaches upon a minimum sideyard setback. The property owner applied for a variance for the project. The variance was denied by the Planning Commission and was subsequently appealed to the City Council, which upheld the Planning Commission decision.

On September 21, 2011, staff mailed a letter to the property owner, Mr. Michael Morse, advising him that the property must be brought into compliance by November 1, 2011, or the structure removed. On November 1, 2011, City inspectors found that the structure remained on the property and had been further modified, again without a building permit.

On November 2, 2011, the City sent a notice that the structure is a public nuisance and must be removed by November 10, 2011. A public hearing was scheduled for November 21, 2011. Mr. Morse requested postponement of the hearing. On November 22, 2011, staff sent a notice of the public hearing scheduled for December 19, 2011.

It is recommended that the Council conduct the hearing and order abatement to bring the structure into compliance with City Code or remove the structure by January 15, 2012. If the corrections are not made, a motion for summary enforcement will be filed with District Court to authorize the City to remove the structure, with the costs being recovered through a special assessment.

Mr. Michael Morse, property owner at 1648 Lois Drive, stated that the variance he requested was done at the advice of the City Planner. He was also told to obtain a survey, which he did. The Stop Order was received on July 8, when the garage was two-thirds complete with over \$40,000 invested. In response to the City, he submitted a variance application on July 26, 2011. The application was tabled due to concerns regarding the overall mass of the structure. On July 28, 2011, he received a letter from the City indicating that the height of the structure should be reduced to be consistent with the 15 feet allowed for a single-family home, and the area should be reduced. On August 8, 2011, a revised plan for a variance and property line survey were submitted to the City with the roof lowered to 15 feet 11 inches. The survey showed a 2.3 foot side setback, which was the location of the original garage. On August 24, 2011, the City again denied the variance, which he appealed on September 19, 2011. On September 21, 2011, the City sent a letter denying the appeal. On November 2, 2011, the City sent a letter requesting removal or alteration to bring the garage into compliance. He does not believe the garage is an “illegal accessory structure” or a public nuisance. On November 22, 2011, the City sent a letter advising him of the public hearing on December 19, 2011.

Mr. Morse indicated that he does not believe an illegal structure is defined in City Code so he cannot be prosecuted for something not defined. The dominant feature and use of his property is his home, not the accessory structure. The new garage was built in the same setback location as the old garage. His neighbor is unwilling to sell him land to bring the setback into compliance. This has created a hardship. He has future plans to double the size of his home. The garage was expanded to hold all personal items. The garage does not dominate the neighborhood, and neighbors have signed statements in support of his project.

In regard to a building permit, he did not know he was in violation when he built the new garage in the same location as the old one. If he were allowed to complete the building, it would comply with the Building Code and Development Code. The structure is not a public nuisance and does not offend or annoy considerable members of the public. The definitions of public nuisance do not apply to his garage. Loose debris has been cleaned up.

The real public nuisance is the ditch next to his house. He is requesting a continuance of this matter in order to be able to reapply within six months of denial by the Council. This would bring the matter to March 19, 2012, when he would submit new plans. There is no authority for the City to enforce removal of an “illegal structure” when it is not defined in the Code. He requested copies of all Shoreview files regarding illegal structure abatements.

Mr. Morse stated that he has made efforts to comply. There are properties on the same street that enjoy benefits of storage for personal items. One clearly exceeds the height of the home. Another measures 22 feet wide and 45 feet long, which is significantly larger than 75% of the home foundation. The garage is a significant improvement to his property, as he is now able to store all personal items inside. All vehicles are out of sight. The value of his property has decreased \$48,000. He believes it would be better for the City to increase the value and taxes with this improvement.

Mayor Martin responded that the City does not establish property value. It is done by Ramsey County. Part of the reduction in value is the market value exclusion that the property is not taxed on. No one on the Council wants to punish the property owner. The problem is that a building was built without a building permit, and it is larger than allowed by City Code. While it may seem unfair because there are garages in the neighborhood that are larger, they were built before current City Code regulations. The regulations are in response to complaints of residents at that time. The Council is bound by the ordinance in place at this time. The neighbor has no obligation to sell property for the setback compliance and is not a hardship. She noted that the City has never known exactly where the old garage was located. Had the proper permits been applied for in the beginning, the City could have determined that location.

Councilmember Withhart agreed with Mayor Martin. While the Council sympathizes with Mr. Morse's position, this situation is a result of his actions.

Councilmember Wickstrom stated that even if the existing garage were built in the same location as the old one, it is not the same size as the old garage. It is too deep and far exceeds Code. The requested variance is significant. She would rather work with Mr. Morse than require him to tear it down.

Mr. Schwerm stated that staff met with Mr. Morse in that regard and indicated he would be allowed to reapply before the six-month waiting period has passed, if the proposed size and height of the structure was reduced. The six months could be waived because a significant reduction would be considered a substantial change to the variance application. At that meeting, Mr. Morse was unwilling to reduce the size of the garage.

Councilmember Withhart stated that it has been long practice to not allow a nonconforming use to be built. The setbacks are in City Code for good reason. The City has reasonable expectations.

Councilmember Quigley stated that all Councilmembers and staff have recognized that by proceeding without obtaining a building permit, six areas of violations have occurred. Had the garage been completed, there would be a minimum of six violations and perhaps more. There do not seem to be any mitigating factors to resolve this situation. He does not know of any resolution other than abatement and to follow staff's recommendation.

Councilmember Wickstrom stated that she would like to hear if Mr. Morse would be willing to reduce the depth.

Mayor Martin stated that what the Council is able to do at this time is waive the six-month waiting period and review a new building proposal. It is inappropriate to try to decide what would be permitted. Abatement is harsh in removal of the structure, and she would be willing to look at a new plan. Ms. Nordine stated that the abatement can be ordered, but any time prior to January 15, Mr. Morse can submit his application to be processed. Staff would like the order in place in case a new application is not submitted.

City Attorney Filla concurred with City Planner Nordine. There is plenty of time to change course because court action would take some time. He would recommend the City adopt staff's recommendation.

Councilmember Withhart stated that he believes the existing structure could be altered to bring it into compliance. He would support staff's recommendation.

MOTION: by Councilmember Quigley, seconded by Councilmember Withhart to adopt Resolution 11-104 ordering the abatement of an illegal accessory structure on Michael Morse's property at 1648 Lois Drive. The illegal accessory structure constitutes a public nuisance based on the following findings:

1. A building permit was not issued by the City authorizing the construction of the structure on the property as required per Section 212, Building and Fire Code, of the Development Code and Minnesota State Statutes, Chapter 16B.59 to 16B.75.
2. The structure is not constructed with the minimum fire-resistance rating in accordance with the Building Code Section R302, Exterior Wall Location.
3. The unfinished condition of the structure violates Section 211.060(A) and Section 211.070(C)(1)(4) of the Development Code.
4. The structure exceeds the maximum area permitted as stated in Section 205.082(D)(5)(a)(ii) and Section 205.082(D)(5)(a)(iii) of the Development Code.
5. The 2.3 foot side yard setback of the structure encroaches upon the minimum 5-foot side yard setback permitted as stated in Section 205.082(D)(5)(b)(i) of the Development Code.
6. The exterior design and construction of the structure is in violation of Section 205.082(D)(5)(e)(i)(ii)(iii) of the Development Code.

Discussion:

Councilmember Wickstrom stated that she would support the motion knowing that there is an opportunity for Mr. Morse to submit a new application and work with the City.

Mr. Morse stated that his understanding in meeting with staff is that the structure must be brought into compliance. He does not see that as working with a citizen. The side

setback will not be in compliance. His suggestion for a divider wall from the front of the garage to the back was not acceptable. It is an incredibly expensive procedure to try to make a new application by January 15, 2012. He would prefer to defend himself in court rather than trying to work with the City that insists on compliance. He did send a certified letter to be signed for by City Manager Schwerm that was returned. Mr. Schwerm explained that the letter was returned because he was not in the building at the time of delivery to sign for it. When sending a certified letter, it is better if anyone in the building can sign for it, and then it will reach him.

Mayor Martin stated that staff are not elected officials, and they have to provide the best information they can about what they think would be approved by the Planning Commission and City Council. Staff can only provide guidance according to the law. The burden is on Mr. Morse to provide something that works within the City ordinance. She encouraged him to try to work with staff.

ROLL CALL: Ayes: Wickstrom, Withhart, Quigley, Martin
 Nays: None

SPECIAL ORDER OF BUSINESS

Meeting Dates

Mayor Martin stated six applications were received for the three Planning Commission vacancies. Planning Commission terms expire at the end of January. She would prefer to interview applicants and be able to make appointments by the second Council meeting in January. Chair Feldsien, who is retiring from the Planning Commission, will be included to participate in the interviews. One of the applicants, Commissioner Proud, is reapplying. It was the consensus of the Council that given his years of service and experience, it would not be necessary to interview him.

It was the consensus of the Council to hold the interviews on the January 9, 2012 workshop date, and schedule a second workshop meeting on January 23, 2012.

The Municipal Legislative Commission will hold a reception to meet with legislators on January 30, 2012, at the Minnesota History Center. Also, the Ramsey County League of Local Governments will have a meeting with legislators on January 26, 2012. In light of these opportunities to meet with legislators, it was the consensus of the Council to not hold a separate meeting with legislators.

ULI/Navigating the New Normal

Mayor Martin explained that this program is a way to meet with the Planning Commission to discuss development. It is highly recommended by other cities who have participated in the program. It is tentatively scheduled for March 12, 2012.

ADJOURNMENT

MOTION: by Councilmember Quigley, seconded by Councilmember Withhart to adjourn the meeting at 8:55 p.m.

VOTE: Ayes - 4 Nays - 0

Mayor Martin declared the meeting adjourned.

THESE MINUTES APPROVED BY COUNCIL ON THE 3rd DAY OF JANUARY 2012.

Terry C. Schwerm
City Manager